Internal Revenue Service

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November 23, 2011

In Re:

LEGEND

Taxpayer =

Sub 1 =

Sub 2 =

Sub 3 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

L =

M =

N =

O =

P =

Q =

R =

S =

U =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

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m =

n =

o =

p =

q =

r =

s =

t =

Dear :

This letter responds to a request for a ruling dated December 15, 2010, and subsequent correspondence, submitted on behalf of Taxpayer by your authorized representative. Taxpayer requested rulings under §§ 542 and 565 of the Internal Revenue Code and under § 301.9100-3 of the Income Tax Regulations.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is the parent of a consolidated group of corporations filing consolidated federal income tax returns for Year 1 through Year 5. Taxpayer was a publicly traded corporation for Year 1 through Year 5. Sub 1, Sub 2, and Sub 3, Taxpayer's subsidiaries for each year, generated income sufficient to satisfy the adjusted ordinary gross income requirement of § 542(a)(1) on a separate company basis. The public held a total of k of Taxpayer on the last day of Year 1. The total percentage held by the

public did not materially change at any time during the last six months of Year 1. Other than J, no individual shareholder was known to hold a direct or indirect interest in Taxpayer greater than e. The remaining shares of Taxpayer were held by L, M, and N, which held respective interests in Taxpayer of l, m, and n.

Interests in L were held in Year 1 by individuals and organizations as described in § 542(a)(2)) (collectively, individuals), partnerships, and corporations. The total interest in Taxpayer held by individuals in L was a. O owned a direct interest in L of o. B would own indirectly b of Taxpayer. A owned a direct interest in L of r, and C would own indirectly c of Taxpayer. There were no other entities of L that owned more of an interest in L that would result in an indirect interest in Taxpayer greater than e.

Interests in M were held in Year 1 by individuals, partnerships, and corporations. The total interest in Taxpayer held by individuals in M was d. P owned a direct interest in M of p, and E would own indirectly e of Taxpayer. D owned a direct interest in M of s, and F would own indirectly f of Taxpayer. There were no other entities of M that owned more of an interest in M that would result in an indirect interest in Taxpayer greater than e.

Interests in N were held in Year 1 by a single individual, partnerships, and corporations. The total interest held by the individual in N was an indirect interest in Taxpayer of g. Q owned a direct interest in N of g, and H would own indirectly h of Taxpayer. G owned a direct interest in N of t, and I would own indirectly i of Taxpayer. There were no other entities of N that owned more of an interest in N that would result in an indirect interest in Taxpayer greater than e.

Taxpayer did not know the identities of the owners that were public shareholders of Taxpayer (other than R, S, and U, and those which were shareholders of record or who made SEC filings). J owned an indirect interest in Taxpayer of j. Taxpayer did not know of the identities of the owners of entities that were members of L, M, and N, except for certain individuals.

RULINGS REQUESTED

1. Taxpayer was not a personal holding company for Year 1 through Year 5.

2. If Taxpayer was a personal holding company, Taxpayer requests relief under § 301.9100-3 of the Income Tax Regulations for an extension of time to make a consent dividend election under § 565(a) for Year 1 through Year 5.

LAW AND ANALYSIS

Section 541 imposes for each taxable year on the undistributed personal holding company income of every personal holding company a personal holding company tax equal to 15 percent of the undistributed personal holding company income.

Section 542(a) defines a personal holding company as any corporation (other than any corporation described § 542(c)) if: (1) at least 60 percent of its adjusted ordinary gross income (as defined in § 543(b)(2)) for the taxable year is personal holding company income (as defined in § 543(a)), and (2) if at any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals.

Under § 542(b)(1), in the case of an affiliated group of corporations filing or required to file a consolidated return under § 1501 for any taxable year, the adjusted ordinary gross income requirement of § 542(a)(1) is, except as provided in § 542(b)(2) and (3), applied for the year with respect to the consolidated adjusted ordinary gross income and the consolidated personal holding company income of the affiliated group. Under § 542(b)(2), the rule in § 542(b)(1) does not apply to an affiliated group of corporations if: (1) any member of the affiliated group of corporations (including the common parent corporation) derived 10 percent or more of its adjusted ordinary gross income for the taxable year from sources outside the affiliated group, and (2) 80 percent or more of that amount consists of personal holding company income as described in § 543.

Section 544 provides rules for determining stock ownership for purposes of determining whether a corporation is a personal holding company. Section 544(a)(1) provides that, insofar as such determination is based on stock ownership under § 542(a)(2), stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Section 544(a)(2) provides that, insofar as such determination is based on stock ownership under § 542(a)(2), an individual shall be considered as owning the stock owned, directly or indirectly, by or for the individual's family or by or for the individual's partner. For purposes of § 544(a)(2), the family of an individual includes only the individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

Section 544(a)(5) provides that stock constructively owned by a person by application of § 544(a)(1) or (3) shall, for purposes of § 544(a)(1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of § 544(a)(2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

When stock of a potential personal holding company is owned by a partnership, corporation, estate, or trust, § 544(a)(1) provides that it is treated as being owned proportionately by its shareholders, partners, or beneficiaries. This language excludes these entities from being considered to be the owner of the potential personal holding company stock, and attributes any direct or indirect interest in the potential personal holding company only to individuals. After the stock is allocated to individuals,

§ 544(a)(2) provides that an individual is considered as owning the stock owned, directly or indirectly (after indirect allocations under § 544(a)(1)), by or for his family or by or for his partner and is applied to attribute ownership between those individuals who directly own such stock or who have been allocated the indirect interests in the personal holding company under § 544(a)(1).

Based on the facts and representations submitted with Taxpayer's ruling request and applying the constructive ownership rules under § 544(a) to the facts of this case, we have determined that Taxpayer failed the stock ownership requirements of § 542(a)(2) and was not a personal holding company during Year 1 through Year 5.

Because we have concluded that Taxpayer was not a personal holding company for Year 1 through Year 5, Taxpayer's second ruling request concerning an extension of time to make a consent dividend election under § 565(a) for Year 1 through Year 5 does not apply.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion on whether Taxpayer otherwise meets the requirements of § 542.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax returns to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Nicole Cimino
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure: 6110 copy

cc :